

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7367 of 1996

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

RAMESHBHAI KHODABHAI PADSHALA

Versus

STATE OF GUJARAT

Appearance:

MR GM JOSHI for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 08/04/2004

ORAL JUDGEMENT

1. The petitioner is a trader carrying on business in the name and style of Gayatri Oil Depot at Surat. On 9th July 1992, the District Supply Officer inspected the premises of the petitioner and seized stock of groundnut oil. Thereafter on 28th June 1993 the Collector, Surat

passed an order for confiscation of the said groundnut oil. Against the said order the petitioner preferred an appeal before the Appellate Authority. On 7th September 1996 the petitioner's appeal was dismissed exparte and therefore the present petition has been filed.

2. The case of the petitioner is that only on the basis of octroi receipts the authorities have presumed that the petitioner has imported oil, which is illegal and erroneous.

3. Mr. Joshi, learned Advocate for the petitioner has stated that the petitioner has already closed his business, but the order of both the authorities cast a stigma on the petitioner. He, therefore, submitted that without entering into the merits of the matter, the order of confiscation may be converted into a penalty.

3. Prima facie it is clear that the order of confiscation is passed only on the basis of the octroi receipts. Moreover, the impugned order has been passed exparte. The Supreme Court in the case of N.Nagendra Rao & Co. Vs. State of A.P., reported in AIR 1994 SC 2663, it is held that a trader indulging in black-marketing or selling adulterated goods etc. should not, in absence of any violation, be treated at par with technical violations such as failure to put up the price list, etc. or even discrepancies in stock. Therefore, looking the particular facts and circumstances of the case there is sufficient justification to cancel the confiscation and treat the amount recovered by the authority as penalty.

4. In the premises aforesaid, the petition is partly allowed. The impugned orders passed by the authorities below are modified to the extent that the amount received by the authority may be treated as penalty imposed upon the petitioner instead of confiscation. Rule is made absolutely to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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